

### REMARKS

Claims 2 and 21-25 stand rejected under 35 U.S.C. §112, second paragraph, for indefiniteness. It is believed that the foregoing amendments to claims 2 and 21-25 overcome this rejection.

Claims 1-3 and 5-9 stand rejected under 35 U.S.C. §102(e) for anticipation by U.S. Patent No. 6,711,137 to Klassen et al. Claims 10-27 stand rejected under 35 U.S.C. §103(a) for obviousness from the teachings of the Klassen et al. patent in view of U.S. Patent No. 6,654,914 to Kaffine et al. In the rejection of independent claims 10 and 21, the Kaffine et al. patent is relied upon only for its allegedly disclosing presenting a diagnostic web page to the user.

In response to the rejection of the claims under 35 U.S.C. §§102(e) and 103(a), independent claims 1, 10 and 21 have been amended as set forth above. Claim 19 has also been amended to correct a typographical error.

As amended herein, claim 1 recites a method of measuring the throughput of a network. The method includes (a) transmitting a block of data over the network, wherein the size of the block of data is selected to fill a network packet; (b) measuring a value representative of the transmit time of the block; (c) computing the data transmission rate of the block; (d) repeating steps (a), (b) and (c) until a stop event occurs, wherein the stop event is the first to occur of transmitting a number of blocks or the passage of an amount of time; (e) computing the network throughput by averaging the data transmission rates of selected ones of the blocks; and (f) outputting the computed network throughput. Support for this amendment to claim 1 can be found in paragraphs [0041] and [0044] of the publication of the above-identified application, namely, US 2005/0068891.

Paragraph [0044] of the publication of the subject application discloses that the ethernet protocol specifies that the frame size of messages transferred over the network should be 1,518 bytes. The block of data sent at step 216 in Fig. 2 of the application preferably is the same size as the maximum message payload specified by the network protocol. In contrast, paragraphs [0035] – [0045] of column 9 of the Klassen et al. document disclose transmitting pings of 64 bytes and pings of 1,464 bytes. However, the size of both of these pings is less than

the maximum message payload specified by the ethernet network protocol described in paragraph [0044] of the publication of the application. Accordingly, the Klassen et al. document does not disclose, teach, or suggest the limitation of claim 1 that the size of the block of data is selected to fill a network packet.

Absent disclosing, teaching, or suggesting a method having all the limitations of claim 1, the Klassen et al. patent cannot anticipate or render obvious claim 1, or claims 2, 3, and 5-9 dependent therefrom.

Regarding the rejection of independent claims 10 and 21 under 35 U.S.C. §103(a), as noted above, the Examiner relies upon the Klassen et al. patent as the primary reference and relies on the Kaffine et al. patent only for its disclosing presenting a diagnostic web page to the user. For the reasons discussed above in connection with claim 1, the Klassen et al. patent cannot anticipate or render obvious independent claims 10 and 21 of the present application. The Kaffine et al. patent, which is relied upon only for disclosing presenting a diagnostic web page to the user, does not cure the deficiencies in the teachings of the Klassen et al. patent.

Absent disclosing, teaching, or suggesting a method having all the limitations of claim 10 or a diagnostic unit operative in the manner of claim 21, the Klassen et al. and Kaffine et al. patents, either individually or in combination, cannot anticipate or render obvious independent claims 10 and 21 of the present application, or claims 11-20 and 22-27 dependent therefrom.

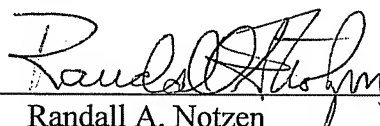
A benefit of selecting the size of the block of data to fill a network packet is that the throughput of the network can be computed under maximum loading conditions that should not introduce buffer delays in the transmission of said block of data over the network. Thus, the computer network throughput determined in this manner should represent a worst case network throughput that simply cannot be computed by transmitting one or more blocks of data that do not fill a network packet.

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CONCLUSION

Based on the foregoing Amendments and Remarks, reconsideration of the rejections and allowance of claims 1-3 and 5-27 are requested.

Respectfully submitted,  
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